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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-320

13
14 **KRISTEN MARIE FINKS, AKA KRISTEN**
15 **MARIE ESPOSITO**
16 **1523 E. Omaha Street, Apt. B3**
17 **Broken Arrow, OK 74012**
18 **Registered Nurse License No. 705824**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

19
20 Respondent.

21 **FINDINGS OF FACT**

22 1. On or about October 25, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her
23 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
24 Consumer Affairs, filed Accusation No. 2013-320 against Kristen Marie Finks, aka Kristen Marie
25 Esposito ("Respondent") before the Board of Registered Nursing. (Accusation attached as
26 Exhibit A.)

27 2. On or about June 28, 2007, the Board of Registered Nursing ("Board") issued
28 Registered Nurse License No. 705824 to Respondent. The Registered Nurse License was in full

1 force and effect at all times relevant to the charges brought in Accusation No. 2013-320 and will
2 expire on April 30, 2013, unless renewed.

3 3. On or about October 25, 2012, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 2013-320, Statement to Respondent, Notice of Defense,
5 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
6 and 11507.7) at Respondent's address of record which, pursuant to California Code of
7 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.
8 Respondent's address of record was and is: 1523 E. Omaha Street, Apt. B3, Broken Arrow, OK
9 74012.

10 4. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

13 5. On or about November 13, 2012, the aforementioned documents were returned by the
14 U.S. Postal Service marked "Return to Sender Unable to Forward." The address on the
15 documents was the same as the address on file with the Board. Respondent failed to maintain an
16 updated address with the Board and the Board has made attempts to serve the Respondent at the
17 address on file. Respondent has not made herself available for service and therefore, has not
18 availed herself of her right to file a notice of defense and appear at hearing.

19 6. Government Code section 11506 states, in pertinent part:

20 (c) The respondent shall be entitled to a hearing on the merits if the respondent
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts
22 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
24 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2013-
25 320.

26 8. California Government Code section 11520 states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense or to appear at the
28 hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to

1 respondent.

2 9. Pursuant to its authority under Government Code section 11520, the Board finds
3 Respondent is in default. The Board will take action without further hearing and, based on the
4 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
5 taking official notice of all the investigatory reports, exhibits and statements contained therein on
6 file at the Board's offices regarding the allegations contained in Accusation No. 2013-320, finds
7 that the charges and allegations in Accusation No. 2013-320, are separately and severally, found
8 to be true and correct by clear and convincing evidence.

9 10. Taking official notice of its own internal records, pursuant to Business and
10 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
11 and Enforcement is \$7,032,45 as of December 3, 2012.

12 **DETERMINATION OF ISSUES**

13 1. Based on the foregoing findings of fact, Respondent Kristen Marie Finks, aka Kristen
14 Marie Esposito has subjected her Registered Nurse License No. 705824 to discipline.

15 2. The agency has jurisdiction to adjudicate this case by default.

16 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
17 Nurse License based upon the following violations alleged in the Accusation which are supported
18 by the evidence contained in the Default Decision Evidence Packet in this case:

19 (a) Business and Professions Code sections 2761, subdivision (a) and 2762,
20 subdivision (b) on the grounds of unprofessional conduct – use of a dangerous drug while on duty
21 – in that Respondent used a dangerous drug, to wit, Propofol, while on duty as a registered nurse.

22 The facts and circumstances are as follows:

23 (i) On or about May 12, 2010, Respondent was employed as a registered
24 nurse in the capacity as Assistant Manager of Surgery for St. Francis Medical Center in Lynwood,
25 CA and was on duty. At approximately 11:20 a.m., the Surgery Manager paged Respondent but
26 received no response. She telephoned Respondent several times but initially received no answer.
27 When Respondent finally answered her phone, her speech was slurred and incomprehensible.
28 The Surgery Manager went to Respondent's office and found Respondent sitting at her desk with

1 her sleeve rolled up and a used syringe and small bottle of white liquid inside her open desk
2 drawer.

3 (ii) At approximately 12:30 p.m., the Surgery Manager returned to
4 Respondent's office with the Surgery Director. Respondent was slumped over her desk, her
5 speech was slurred, her pupils were dilated, and her knuckles were bloody. The Surgery Director
6 asked Respondent to open the desk drawer and she observed a syringe with pink fluid and a vial
7 of Propofol. Respondent stated that she had found the syringe and the Propofol earlier that
8 morning near the sharps container and had intended to tell the Surgery Director about it.
9 However the Surgery Director had seen Respondent that same morning and Respondent never
10 mentioned the Propofol or the syringe. The Surgery Director asked Respondent to empty her
11 pockets and Respondent removed bloody tissues from her pockets.

12 (iii) The Surgery Director examined the area around the sharps container and
13 found 15 vials of Propofol with tiny needles and tissues like the ones in Respondent's pocket.
14 The size of the needles that the Surgery Director found would not have been used for anesthesia,
15 which is a typical use for Propofol.

16 (iv) The vial found in Respondent's desk was tested and it contained
17 Propofol. Respondent was terminated from her employment with St. Francis Medical Center that
18 same day.

19 (b) Business and Professions Code sections 2761, subdivision (a) and 2762,
20 subdivision (a) on the grounds of unprofessional conduct – unlawful possession of a dangerous
21 ~~drug while on duty – in that Respondent possessed a dangerous drug, to wit, Propofol, without~~
22 legal authorization to do so. The circumstances are that on or about May 12, 2010, while
23 Respondent was on duty at St. Francis Medical Center, Respondent was found with Propofol and
24 a syringe in her personal possession without legal authorization. The Board incorporates by
25 reference Paragraph 3, subparagraphs (a)(i)-(iv), inclusive, as though fully set forth herein.

26 (c) Business and Profess Code section 2761, subdivision (a)(4) on the grounds of
27 unprofessional conduct in that Respondent's registered nursing license was disciplined by the
28 Oklahoma Board of Nursing when on or about March 27, 2012, in a case entitled *In the Matter of*

1 *Kristen Marie Esposito Finks, R.N., License No. R0087383*, the Oklahoma Board issued a
2 Stipulation, Settlement, and Order adopting a stipulation between the parties that Respondent
3 surrender her license to practice nursing in Oklahoma. The facts and circumstances underlying
4 the Stipulation, Settlement and Order were:

5 (i) On or about July 20, 2010, while employed with St. Francis Health
6 System in Tulsa, Oklahoma, Respondent was found passed out in her car. Respondent told
7 security that she was okay. However shortly after 11:00 p.m. that same evening, Respondent was
8 found unconscious in a hospital waiting room bathroom stall with a blue glove tied around her
9 arm and blood on her thighs and the antecubital areas of her arms. A milky white substance and
10 a 20 ml syringe and needle were found on the floor. Additionally, a vial of Propofol, syringes,
11 and needles were found in Respondent's purse. St. Francis Health System terminated Respondent
12 from its employment on July 28, 2010.

13 (ii) On or about August 25, 2010, Respondent voluntarily entered the Peer
14 Assistance Program after admitting to diverting controlled dangerous substances from St. Francis
15 Health System.

16 (iii) On or about November 10, 2010, Respondent was terminated from the
17 Peer Assistance Program for failure to comply with the terms and conditions of the contracts that
18 she signed with the program.

19 (d) Business and Professions Code section 2761, subdivision (d) in that Respondent
20 committed acts involving unprofessional conduct thereby violating the Nursing Practice Act. The
21 Board incorporates by reference Paragraph 3, subparagraphs (a), (b), and (c), and all other
22 subparagraphs, as though fully set forth herein.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 705824, heretofore issued to Respondent Kristen Marie Finks, aka Kristen Marie Esposito, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on APRIL 11, 2013.

It is so ORDERED MARCH 12, 2013


FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

51200653.DOC
DOJ Matter ID:LA2012507882

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 SYDNEY M. MEHRINGER
Deputy Attorney General
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5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804
E-mail: Sydney.Mehringer@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2013- 320

12 **KRISTEN MARIE FINKS, AKA KRISTEN**
13 **MARIE ESPOSITO**

14 **1523 E. Omaha Street, Apt. B3**
Broken Arrow, OK 74012

A C C U S A T I O N

15 **Registered Nurse License No. 705824**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about June 28, 2007, the Board of Registered Nursing ("Board") issued
24 Registered Nurse License Number 705824 to Kristen Marie Finks, aka Kristen Marie Esposito
25 ("Respondent"). The Registered Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on April 30, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

~~"(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action~~ against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

....

1 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
3 Act] or regulations adopted pursuant to it."

4 8. Section 2762 of the Code states, in pertinent part:

5 "In addition to other acts constituting unprofessional conduct within the meaning of this
6 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
7 chapter to do any of the following:

8 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
9 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
10 administer to another, any controlled substance as defined in Division 10 (commencing with
11 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
12 defined in Section 4022.

13 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
14 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
15 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
16 himself or herself, any other person, or the public or to the extent that such use impairs his or h

17 9. Section 4022 of the Code defines "dangerous drug" as "any drug . . . unsafe for self-
18 use in humans or animals, and includes the following:

19 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
20 prescription,' 'Rx only,' or words of similar import.

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22 "(c) Any other drug . . . that by federal or state law can be lawfully dispensed only on
23 prescription or furnished pursuant to Section 4006."

24 **COST RECOVERY**

25 10. Business and Professions Code section 125.3. states that:

26 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
27 proceeding before any board within the department or before the Osteopathic Medical Board
28 upon request of the entity bringing the proceedings, the administrative law judge may direct a

1 licentiate found to have committed a violation or violations of the licensing act to pay a sum not
2 to exceed the reasonable costs of the investigation and enforcement of the case.

3 "(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order
4 may be made against the licensed corporate entity or licensed partnership.

5 "(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs
6 are not available, signed by the entity bringing the proceeding or its designated representative
7 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.
8 The costs shall include the amount of investigative and enforcement costs up to the date of the
9 hearing, including, but not limited to, charges imposed by the Attorney General.

10 "(d) The administrative law judge shall make a proposed finding of the amount of
11 reasonable costs of investigation and prosecution of the case when requested pursuant to
12 subdivision (a). The finding of the administrative law judge with regard to costs shall not be
13 reviewable by the board to increase the cost award. The board may reduce or eliminate the cost
14 award, or remand to the administrative law judge if the proposed decision fails to make a finding
15 on costs requested pursuant to subdivision (a).

16 "(e) If an order for recovery of costs is made and timely payment is not made as directed in
17 the board's decision, the board may enforce the order for repayment in any appropriate court.
18 This right of enforcement shall be in addition to any other rights the board may have as to any
19 licentiate to pay costs.

20 "(f) In any action for recovery of costs, proof of the board's decision shall be conclusive
21 proof of the validity of the order of payment and the terms for payment.

22 "(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the
23 license of any licentiate who has failed to pay all of the costs ordered under this section.

24 (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally
25 renew or reinstate for a maximum of one year the license of any licentiate who
26 demonstrates financial hardship and who enters into a formal agreement with the board to
27 reimburse the board within that one-year period for the unpaid costs.

"(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

"(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

"(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

"(k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licensee. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435."

DRUGS

11. "Propofol," a trade name for Diprivan, is a prescription injectable emulsion intravenous sedative-hypnotic agent that can be used for sedation and anesthesia and is categorized as a dangerous drug according to Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Dangerous Drug While on Duty)

12. Respondent is subject to disciplinary action under Code sections 2761, subdivision (a) and 2762, subdivision (b) in that Respondent used a dangerous drug, to wit, Propofol, while on duty as a registered nurse. The circumstances are as follows:

13. On or about May 12, 2010, Respondent was employed as a registered nurse in the capacity as Assistant Manager of Surgery for St. Francis Medical Center in Lynwood, CA and was on duty.

14. At approximately 11:20 a.m., the Surgery Manager paged Respondent but received no response. She telephoned Respondent several times but initially received no answer. When Respondent finally answered her phone, her speech was slurred and incomprehensible.

1 15. The Surgery Manager went to Respondent's office and found Respondent sitting at
2 her desk with her sleeve rolled up and a used syringe and small bottle of white liquid inside her
3 open desk drawer.

4 16. At approximately 12:30 p.m., the Surgery Manager returned to Respondent's office
5 with the Surgery Director. Respondent was slumped over her desk, her speech was slurred, her
6 pupils were dilated, and her knuckles were bloody. The Surgery Director asked Respondent to
7 open the desk drawer and she observed a syringe with pink fluid and a vial of Propofol.
8 Respondent stated that she had found the syringe and the Propofol earlier that morning near the
9 sharps container and had intended to tell the Surgery Director about it. However the Surgery
10 Director had seen Respondent that same morning and Respondent never mentioned the Propofol
11 or the syringe. The Surgery Director asked Respondent to empty her pockets and Respondent
12 removed bloody tissues from her pockets.

13 17. The Surgery Director examined the area around the sharps container and found 15
14 vials of Propofol with tiny needles and tissues like the ones in Respondent's pocket. The size of
15 the needles that the Surgery Director found would not have been used for anesthesia, which is a
16 typical use for Propofol.

17 18. The vial found in Respondent's desk was tested and it contained Propofol.
18 Respondent was terminated from her employment with St. Francis Medical Center that same day.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct – Unlawful Possession of Dangerous Drug While on Duty)

21 19. Respondent is subject to disciplinary action under Code sections 2761, subdivision (a)
22 and 2762, subdivision (a) in that Respondent possessed a dangerous drug, to wit, Propofol,
23 without legal authorization to do so. The circumstances are that on or about May 12, 2010, while
24 Respondent was on duty at St. Francis Medical Center, Respondent was found with Propofol and
25 a syringe in her personal possession without legal authorization. Complainant incorporates by
26 reference Paragraphs 15 through 18, inclusive, as though fully set forth herein.

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1 Nursing Practice Act. Complainant incorporates by reference Paragraphs 12-21, inclusive, as
2 though fully set forth herein.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

- 6 1. Revoking or suspending Registered Nurse License Number 705824, issued to Kristen
7 Marie Finks, aka Kristen Marie Esposito;
- 8 2. Ordering Kristen Marie Finks, aka Kristen Marie Esposito to pay the Board of
9 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
10 pursuant to Business and Professions Code section 125.3; and
- 11 3. Taking such other and further action as deemed necessary and proper.
- 12

13 DATED: October 25, 2012 Louise R. Bailey
14 LOUISE R. BAILEY, M.ED., RN
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant

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